IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 346 of 1996

with

CRIMINAL APPEAL No 356 of 1996

with

CRIMINAL REVISION APPLICATION NO.101 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

RAMESH KANAJI SADHU

Appearance:

1. Criminal Appeal No. 346 of 1996
   MR MA BUKHARI, APP, for the appellant.
   NOTICE SERVED for Respondent No. 1
2. Criminal Appeal No. 356 of 1996
   MR G RAMAKRISHNAN for Petitioner No. 1
   MR MA BUKHARI, APP, for the Respondent.

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 10/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

1. All these proceedings are arising out of an order made by learned Additional Sessions Judge, Surat, on 19.1.1996 in Sessions Case No.165 of 1994, wherein the accused was tried for an offence punishable under Section 302 of Indian Penal Code, however, was convicted for an offence punishable under Section 304 Part II and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- and, in default of payment of fine, to undergo further rigorous imprisonment for six months.

2. At the time of hearing, we are told that the accused has already undergone the sentence and considering the benefit of remission, he has been released on the 1st August, 2000.

3. The State has preferred Criminal Appeal No.346 of 1996, as the accused was acquitted by the learned Additional Sessions Judge of the offence punishable under Section 302, I.P.C. The accused-convict has preferred appeal being Criminal Appeal No.356 of 1996, as he was convicted while the original complainant has preferred Criminal Revision Application No.101 of 1996, requesting the Court to convict the accused for an offence punishable under Section 302, I.P.C.

4. The short facts leading to the prosecution case are as under :-

4.1 Niruben (P.W.1) lodged a First Information Report before the Katargam Police on 27.5.1994, inter alia, stating that she was residing at Pran Nath Society, Ved Road. Her brother-Kanaiyalal Bhagwanbhai was residing at Prabhunagar while her family members ordinarily reside in Rajasthan. On the date of incident, deceased-Sosarben, i.e. daughter of the complainant's brother, aged about 17 years and Ushaben, sister of Sosarben, aged about 11 years, came from Rajasthan and, therefore, she had been to the place of her brother to meet them. As both the sisters were at the house and the father had gone to office, the complainant in the company of deceased-Sosar

and Usha went to the house of Parvatiben, wife of Shantilal and younger sister of Niruben. They were on foot. They passed through Prabhunagar-2 and at about 3.30 P.M. or 3.45 P.M., reached near the house of her sister. At that time, deceased-Sosar, after looking behind, started running seeing one person coming with a log. However, the said person, in the meanwhile, delivered one blow with the log on the head of Sosar, as a result of which she fell down. It is her case in the F.I.R. (Ex.30) that other blows were delivered after she fell down. He ran away after delivering the blows. She disclosed the name of the assailant as Ramesh Kanaji Sadhu, who was, at the relevant time, residing in their native place and was engaged in house painting work. Sosar, on sustaining the injuries, became unconscious, as a result of which Niruben called her brother-in-law Shantilal and both of them took Sosar to Ashakta Ashram Hospital, where she died during treatment at about 5.00 P.M. Police, on completion of investigation, filed charge sheet against the accused for having committed an offence punishable under Section 302 of I.P.C. in the Court of learned Judicial Magistrate, First Class, who committed the accused to the Court of Sessions. The charge (Ex.3) dated 22.5.1995 was framed against the accused-appellant, to which he pleaded and contended that he is entirely innocent. The accused was tried for an offence punishable under Section 302, I.P.C. and also Sections 37(1) and 135 of the Bombay Police Act. On appreciation of evidence, the Trial Court accepted the prosecution story.

4.2 So far as issues are concerned, it is required to be noted that the learned Additional Sessions Judge, while framing the issues, only raised the question as to whether, offence punishable under Section 302 against the accused is proved or not. In paragraph 22, the learned Additional Sessions Judge held that the answer to Issue No.1 for the aforesaid question is in the affirmative, meaning thereby the accused is held guilty for an offence punishable under Section 302 of I.P.C. However, after hearing the accused on the question of sentence, learned Additional Sessions Judge held that the accused cannot be held guilty of offence punishable under Section 302 of I.P.C., but is required to he held guilty of offence punishable under Section 304 Part II as also under Section 37(1) and 135 of the Bombay Police Act.

4.3 It is against this judgment that the State has preferred appeal against order of acquittal, the convict has preferred appeal against the order of conviction and the original complainant has preferred revision

application. In view of this, the matters arising out of the same case are disposed of by this common judgment.

5. Learned Additional Public Prosecutor appearing in the matter submitted that the evidence of Niruben (P.W.1) is clear. There is no reason why her evidence should not be accepted for convicting the accused for an offence punishable under Section 302 of I.P.C. She has stated that when they (witness Niruben, Sosar and Usha) reached near the house of her sister-Parvati, at about 3.30 P.M., the accused-Rameshbhai came from backside with a log. Sosar, seeing the accused, started running. In the meanwhile, accused delivered blows on the back of her head, as a result of which, she fell down. Soon thereafter, her sister and others came to the place of offence. It is at that time that the accused ran away. She was shown the complaint signed by her. She further stated that the marriage of her niece-Sosar took place at the native and prior to the marriage, three persons had come to their house for painting work and out of the three, one was the accused. From the evidence, it is submitted that he belongs to the same place and, therefore, there is no question of mistaken identity. She has stated that the log, by means of which the injuries were caused, was about three to three and a half feet in length and was a thick piece of wood. She has identified the log.

5.1 She further stated that when they reached their native place, they came to know that the accused was interested in taking Sosar away from her parents' house, but Sosar was not willing. In the cross-examination, she has denied the suggestion about the love affairs between the two, namely, Sosar and the accused. From the cross-examination, it transpires that her say is that only one blow was delivered. Thereafter, she fell on the ground. She has stated that Parvati and her husband came to the spot immediately and, at that time, the accused ran away. But neither Parvati nor her husband ran after the accused. It is her case that in view of the injury, immediately rickshaw was called for taking the injured to the hospital. She stated that it took about five minutes for the rickshaw to reach and during that time, Parvati was standing by her side.

5.2 It is her case that she conveyed to Parvati that the accused delivered blows on the person of Sosar. She further stated that Sosar was removed in a rickshaw by Shantilal. She stated that she also accompanied Sosar. However, she has stated that, with regard to the incident, there was no talk. Till they reached the

hospital, she did not convey the information as to who delivered the blow. She has denied the suggestion that, she stated that somebody had delivered the blow. She stated that she was interrogated in the hospital.

6. It is required to be noted that, in the instant case, before recording the First Information Report (Ex.30), the police had information vide Ex.29 about the incident in question, giving all necessary details except the name of the accused. Ex.29 is a Wardhi Book, wherein the message communicated by the Police Station Officer of the hospital was recorded. Message was received on 27.5.1995 about 4.45 P.M. The report reveals that at about 3.30 to 3.45 P.M., near J.K. Nagar, one unknown person delivered a blow by means of a log, as a result of which Sosar sustained a serious injury. She was brought to the hospital by Shantilal Jayantibhai at about 4.00 P.M. It is further disclosed that the patient was very serious and has been admitted in to the Emergency Ward for treatment. It is on receipt of the information that the police commenced the investigation.

7. Another witness examined by the prosecution is Shantilal (P.W.4). He has deposed before the Court that, on 27.5.1999, in the afternoon, he was at his house in the company of his wife. On hearing the hubbubs, he came out of his block. He saw Sosar on the ground in an unconscious condition. Niruben, his sister-in-law and his niece Usha were standing there. He did not ask Niru, but Niru said that, blow has been delivered on the head. Soon thereafter, a rickshaw was brought and, in the rickshaw, injured was removed. When he came with rickshaw for removing Sosar, Parvati, his wife, came. When Medical Officer questioned about the injuries and further details, he stated that injury has been caused by delivering a blow on the head. Sosar died at about 5.00 P.M. He stated that, after receiving the injury, till the time of her death, Sosar was not in a position to speak. This witness has stated that when he reached the spot, a log used for centering (log used in construction work) was lying near Sosar. He has given his timings and in cross-examination, questions were put with a view to elicit the answer that he might not have been at home at the relevant time, but he has satisfactorily explained by giving his timings. He has, in cross-examination, stated that as Sosar was required to be removed to the hospital, he did not question anyone as to who delivered the blows. He further stated that till her death, he did not come to know the name of the assailant. He came to know the name of the assailant only after the death of Sosar. He stated that he was very much upset on account of the

injury sustained by Sosar and was also very much busy in removing the injured to the hospital and, therefore, did not bother to question as to who delivered the blow. He stated that his statement was recorded after the death of Sosar. He stated that, after death of Sosar, he learnt about the name of the assailant from Niru and, therefore, he has stated before the Police as to who was the assailant. He clarified that, as earlier he had not inquired, he did not disclose to the police as to who was the assailant.

8. Investigating Officer-Niranjanbhai Vyas (P.W.5) has placed on record the Wardhi (Ex.29) received by the Police Station. He has pointed out the procedure of the investigation. He has also pointed out that the Railway Police Inspector received 16 love letters, two newspaper cuttings and photographs of the deceased. In cross-examination, he has stated that from the contents of the letters which he has examined, he can say that out of the letters, some must have been written by Sosar to the accused. He stated that the handwritings are of deceased, as said by one Kanaiyalal. Considering this evidence, the learned Additional Public Prosecutor has submitted that the prosecution has satisfactorily proved that when the deceased, a helpless lady, was moving on the road in the company of her relatives, she was assaulted by means of a heavy log and, therefore, no mercy should be shown to the accused. The learned Additional Public Prosecutor further submitted that the accused selected a delicate part of the body, namely, the head, and the blow was delivered with such a great force that one injury was sufficient to cause death and, therefore, the Trial Court has committed serious error in acquitting the accused of an offence punishable under Section 302 of I.P.C.

9. It is necessary to consider the medical evidence. We are not discussing in detail the medical evidence, but suffice it to say that the Medical Officer, Dr. Purvez Sheikh, who examined the deceased has, in his evidence, stated that the injury sustained by the deceased was sufficient in ordinary course of nature to cause death. It is required to be noted that as per the prosecution version, one blow was delivered and, in view of this evidence, it was submitted that, as the injury was with intention and with knowledge that it was caused, the offence would be murder.

10. This case is, in our opinion, suffers from various infirmities. There is evidence that there were other disinterested witnesses and they have not been

examined by the prosecution. There is no disclosure of the name of the assailant at the earliest opportunity being available either by Niruben or by Parvatiben. So far as arrival of Parvatiben is concerned, the story placed before the Court by witnesses, namely, Shantilal and Niruben, if compared, it is difficult to say as to at what point of time she must have arrived at the place of offence.

11. Niruben (P.W.1) stated that the accused came from behind and seeing the accused, Sosar started running. In the meanwhile, the accused delivered blows on the head of Sosar with a log. Thereafter, her sister came and the accused ran away. It is also clear from her evidence that she came to know after reaching native place that the accused was to take away Sosar, but Sosar refused to accompany. It is also clear from the evidence that, after marriage, Sosar hardly stayed for about 4-5 days and, thereafter, she returned and till she expired, she had never been to the in-laws's place. In cross-examination, she has given the version that only one blow was delivered, as a result of which Sosar fell on the ground. It is also clear from the evidence of witness-Niruben that Sosar as well as the accused both were residing at Savariyaji and the family of the deceased and the accused belong to different communities. It is difficult to accept her version because, about the number of blows, she has given different versions at different timings. Ordinarily, one would immediately disclose the name of the assailant, but in the instant case, she has not disclosed the name of the accused to Shantilal in whose company Sosar was taken to the hospital for treatment. Though Shantilal made inquiries about the manner in which Sosar sustained injuries, this witness has not disclosed the name. Therefore, her version becomes doubtful about the identity of the assailant. Whether the accused delivered the blows or someone else delivered the blow and the name of the accused has been implicated later on. Whether her clothes or clothes of Shantilal were stained with blood or not has not been stated by her, though questioned. About reaching the Police Station also, her story is doubtful.

12. Vide Panchnama (Ex.12), there is a reference to a log lying on the road, which is ordinarily being used in construction work. From the Panchnama, it is very clear that the said log had no special marks or had no blood marks. However, when it has reached to the Forensic Science Laboratory, blood stains were found on the log. There is no reasonable explanation by the prosecution in

this regard. Witness-Niruben has positively stated that she did not notice any marks of blood on the said log. Panchnama (Ex.12) does not refer to the presence of blood stains on the log. It is also clear from the evidence that the said log was found lying on account of construction work being carried out in that area itself, which is clear from the Panchnama as well as the evidence of Shantilal. As discussed earlier, even Shantilal has not disclosed the name of the assailant and, therefore, it becomes very difficult to believe the presence of the accused on the spot.

13. It is required to be noted that the Police Officer has stated in his evidence that love letters and photographs of the deceased were recovered from the accused. Witness-Kanaiyalal has stated before the Police Officer that the writings of the letters are in the hands of deceased-Sosar. In view of this, it is also clear that there were relations between the deceased and the accused. They were not on inimical terms and, therefore, there is no earthly reason for the accused to commit the crime. It is also required to be noted that the prosecution, though having letters in the custody, has not bothered to carry out investigation. It was the duty of the Investigating Officer to place on record the dates of the letters and contents thereof to arrive at a conclusion whether the relations continued or not. In the instant case, apart from that, the report under Section 157 of the Code of Criminal Procedure has reached the Court on 30.5.1994. If the offence took place on 27.5.1994 and the information was recorded on the same date, why the report was forwarded after delayed period? Is it a case of ante timing? When specific questions were put, it was the duty of the prosecution to explain. The prosecution could have explained that there was inaction on the part of the Police Constable to deliver the report to the Court in time or there was inaction on the part of the Police Constable to forward the copy, but in absence of any explanation, whatever inference we have drawn is a probable inference. In the Trial Court, specific questions have been put in this behalf, yet explanation has not been tendered. If the clothes of Niruben were stained with blood, why clothes were not seized by the investigating agency? If the clothes would have been attached, it could have been said that she was travelling in the rickshaw while the deceased was being removed to the hospital. In absence of this, it may be difficult to accept that she was in the rickshaw. Other two witnesses who were in the company of Niruben have not been examined and the totality of the circumstances narrated hereinabove, in our opinion, would weigh in

favour of the defence and the benefit of doubt should be given to the accused.

14. In the result, Criminal Appeal No.346 of 1996 is dismissed. Criminal Appeal No.356 of 1996 is allowed. The judgment and order of the Trial Court is hereby set aside. Criminal Revision Application No.101 of 1996 is rejected and Rule is discharged.

[B.C. PATEL, J.]

[A.L. DAVE, J.]

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